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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 GLEN TROGDON,

9 *Petitioner,*

10 vs.

11 STATE OF NEVADA, et al.,

12 *Respondents.*
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2:15-cv-01157-APG-CWH

ORDER

15 Petitioner, a Nevada prisoner, has filed a petition for writ of habeas corpus pursuant to 28
16 U.S.C. § 2241 (Dkt. #1-1). Petitioner's application to proceed *in forma pauperis* (Dkt. #1) is granted.
17 The court has reviewed the petition pursuant to the Rules Governing Habeas Cases, and the petition
18 must be dismissed as unexhausted.

19 A federal court will not grant a state prisoner's petition for habeas relief until the prisoner has
20 exhausted his available state remedies for all claims raised. *Rose v. Lundy*, 455 U.S. 509 (1982); 28
21 U.S.C. § 2254(b). A petitioner must give the state courts a fair opportunity to act on each of his claims
22 before he presents those claims in a federal habeas petition. *O'Sullivan v. Boerckel*, 526 U.S. 838, 844
23 (1999); *see also Duncan v. Henry*, 513 U.S. 364, 365 (1995). A claim remains unexhausted until the
24 petitioner has given the highest available state court the opportunity to consider the claim through direct
25 appeal or state collateral review proceedings. *See Casey v. Moore*, 386 F.3d 896, 916 (9th Cir. 2004);
26 *Garrison v. McCarthy*, 653 F.2d 374, 376 (9th Cir. 1981).

27 Petitioner indicates on the face of his petition that he has a pending state habeas petition
28 challenging the execution of the sentence that he seeks to attack here (*see, e.g.*, Dkt. #1-1, p. 13). Thus,

1 the present action will be dismissed without prejudice because the claims are unexhausted. Upon
2 exhausting his claims, petitioner may file a new habeas petition pursuant to 28 U.S.C. § 2241 on the
3 form required by this court in a new action with either the \$5.00 filing fee or a completed application
4 to proceed *in forma pauperis* on the proper form with both an inmate account statement for the past six
5 months and a properly executed financial certificate.

6 Further, the court notes that petitioner has not named his custodian as a respondent. A petitioner
7 must name as a respondent the officer who has current custody of petitioner—usually the warden of the
8 prison. Failure to name the custodian as respondent deprives the court of personal jurisdiction.
9 *Johnson v. Reilly*, 349 F.3d 1149, 1153 (9th Cir. 2003).

10 Petitioner at all times remains responsible for properly exhausting his claims, for calculating
11 the running of the federal limitation period as applied to his case, and for properly commencing a
12 timely-filed federal habeas action.

13 **IT IS THEREFORE ORDERED** that the application to proceed *in forma pauperis* (Dkt. #1)
14 is **GRANTED**.

15 **IT IS FURTHER ORDERED** that this action is **DISMISSED** without prejudice to the filing
16 of a petition in a new action with either the \$5.00 filing fee or a properly completed application form
17 to proceed *in forma pauperis*.

18 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**, as jurists of
19 reason would not find the court's dismissal of this unexhausted action without prejudice to be debatable
20 or incorrect.

21 **IT IS FURTHER ORDERED** that the Clerk shall send petitioner two copies each of an
22 application form to proceed *in forma pauperis* for incarcerated persons and a Section 2241 habeas
23 petition form, one copy of the instructions for each form, and a copy of the papers that he submitted
24 in this action.

IT IS FURTHER ORDERED that the Clerk shall **ENTER JUDGMENT** accordingly and close this case.


UNITED STATES DISTRICT JUDGE